



Development Group, proceeded to sign a mortgage deed with the Plaintiff in respect of the sum advanced to be secured by the suit property. The mortgage deed was never registered with the Registrar of Titles.

4. In an affidavit sworn by Naate Masangazira, the National Program Manager of the Plaintiff, it is averred inter alia, that despite incessant demands the principal borrower has failed to pay the principal amount, and interest. This affidavit is not contradicted. I accept the claim that the principal borrower has failed to pay the principal amount and interest.
5. A mortgagee under the Mortgage Act, may realise his security by proceeding in any number of ways provided by the Act. In this instance it seeks foreclosure. Foreclosure is governed by Section 8 of the Act. I will set it out.

“8. Foreclosure (1) A mortgagee may apply to court to foreclose the right of the mortgagor to redeem the mortgaged land anytime after the breach of covenant to pay.

(2) Upon an application by the mortgagee under this section, the court shall determine the amount due to the mortgagee and may fix a date, not exceeding six months from the date of the failure to pay, within which the mortgagor shall pay the amount due.

(3) If the mortgagor fails to pay on the date fixed by the court under the subsection (2), the court shall order that the mortgage be foreclosed of his or her right to redeem the mortgaged land and that the land be offered by the mortgagee for sale in accordance with Section 9.”

6. Applying the above provisions, in light of the present suit, I determine that the sum of shs.7,430,000.00, being the principal amount, and interest at the rate of 20% per annum, from the 15<sup>th</sup> August 1997 to the date of filing of this suit, 22<sup>nd</sup> February 2005 is due from the principal borrower to the Plaintiff. Though in paragraph 13 of the supporting affidavit the Plaintiff claimed interest at the rate of 28% per annum, I find no support for this rate of interest on the evidence. The mortgage deed reads agreed interest to be 20% per annum and this is repeated in paragraph 7 of the affidavit.
7. I order the Mortgagor to pay the said amounts of money to the Plaintiff, and interest at court rate from 22<sup>nd</sup> February 1997 till payment in full, within a period of 3 months from today to expire on 31<sup>st</sup> August 2005. In event of default thereof, the Plaintiff shall come back before this court, for an order of foreclosure.
8. I direct that the mortgagor/defendant be notified of this order by the plaintiff through a newspaper with national circulation as efforts at personal service had previously failed, and the last service was by way of substituted service.

9. The plaintiff has claimed general damages in this action. This is misplaced, in my view, as it is not envisioned under Order 34 Rule 3A under which provisions this action was brought. This claim for general damages is accordingly dismissed.

10. The defendant shall bear the costs of these proceedings.

Dated at Kampala this 1<sup>st</sup> day of June 2005

FMS Egonda-Ntende

Judge